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BRIAN CHRISTENSEN

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen,	)	CIVIL NO. CV03-00385 SOM-LEK
	)	(Copyright)
Plaintiff,)	
	)	DEFENDANT BRIAN
v.	)	CHRISTENSEN'S JOINDER TO
	)	DEFENDANT C&S WHOLESALE
HAWAIIAN EXPRESS SERVICE,	)	GROCERS, INC.'S EX PARTE
INC., et al.	)	MOTION FOR WRIT OF
	)	EXECUTION, FILED ON
Defendants.	)	FEBRUARY 19, 2008;
	)	DECLARATION OF LYLE S.
	)	HOSODA; CERTIFICATE OF
	)	SERVICE
_____)	

DEFENDANT BRIAN CHRISTENSEN'S
JOINDER TO DEFENDANT C&S WHOLESALE GROCERS, INC.'S
EX PARTE MOTION FOR WRIT OF EXECUTION,
FILED ON FEBRUARY 19, 2008

Comes now, Defendant Brian Christensen (“Christensen”), by and through his attorneys, Lyle S. Hosoda & Associates, LLC, and pursuant to Rule 7 of the Federal Rules of Civil Procedure and L.R. 7.9 of the Local Rules of Practice for the United States District Court for the District of Hawaii, hereby joins in Defendant C& S Wholesale Grocers, Inc.’s Ex Parte Motion for Issuance of Writ of Execution after Judgment, filed on February 19, 2008 (“C&S’s Motion”).

A jury trial was held in this matter beginning on February 28, 2006 before the Honorable Susan Oki Mollway, and a jury returned a verdict on March 7, 2006. The jury found in favor of Plaintiff Wayne Berry and against Defendants Post-Confirmation Trust for Fleming Companies, Inc. (“PCT”), Mark Dillon, and Teresa Noa on the issue of damages.

Following the trial, the trial and non-trial parties filed their respective motions for attorney’s fees and costs pursuant to the Court’s rulings on motions for summary judgment filed by the parties and the jury’s verdict.

On March 2, 2007, the Order Adopting and Modifying the October 25, 2006, and December 4, 2006, Reports of Special Master on the Parties’ Motions for Attorneys’ Fees and Costs was entered herein (“Fees and Costs Order”) in favor of Defendant Brian Christensen (“Christensen”) and against Plaintiff Wayne Berry (“Berry”) in the amount of \$27,507.20 as follows:

On December 4, 2006, the magistrate judge issued a special master's report on Berry's, Employees, and Fleming's motions for fees and costs ("12/04/2006 Report" or "December 4 Report"). The magistrate recommended that this court grant in part and deny in part all of the motions by: . . . (3) awarding Employees' attorneys' fees incurred by Christensen in the amount of \$27,507.20 and denying their motion in all other respects.

* * *

The court disagrees with Berry and adopts the magistrate's recommendation to award Christensen attorneys' fees.

See Declaration of Lyle S. Hosoda ("Hosoda Dec."); Fees and Costs Order (March 2, 2007) at pages 3 and 26.

The Fees and Costs Order is a final and enforceable judgment. *See* Order Declining Defendants' Request for Additional Entry of Judgment, entered herein on May 21, 2007; Hosoda Dec.

The foregoing Judgment has been appealed, but has not been reversed, modified, or set aside, in whole or in part, and remains in full force and effect. No bond has been posted by Berry and any stay of execution has expired. *See* Hosoda Dec.

The Judgment remains unsatisfied, and Christensen is still an owner and holder of the Judgment. *See* Hosoda Dec.

By virtue of said Judgment, there is presently due and owing to Christensen the above-stated sums, exclusive of post-judgment interest thereon. No payments have been made by Berry, despite written demand by Christensen. *See* Hosoda Dec.

Christensen adopts by reference the factual and legal support provided in C&S's Motion. This Court, sitting in equity, can issue the Writ of Execution on Berry's personal property, even those not capable of possession by the levying officer. *See Crescent City Motors, Ltd. Nalaielua*, 31 Haw. 418 (1930) (holding that the debtor's equitable, contingent remainder interest in his mother's trust, the contingency being that he survive to a named date, was seizable by a court of equity in satisfaction of the claims of his creditors).

Christensen respectfully requests that the Court grant Defendant C& S Wholesale Grocers, Inc.'s Ex Parte Motion for Issuance of Writ of Execution after Judgment, filed on February 19, 2008.

DATED: Honolulu, Hawaii, February 20, 2008.

/s/ Lyle S. Hosoda
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